

further questions for clarification on section 3?

Delegate Henderson?

DELEGATE HENDERSON: Referring again to section 3, sovereign immunity, I would like to call attention to one fact which has not yet been mentioned, I believe, and that is that the legislature under the present Constitution has dealt with this subject of sovereign immunity by providing that it cannot be pleaded in any case where insurance is covered. That has been worked out very carefully under the rules of court to keep the fact of insurance away from the jury, so that to that limited extent, the legislature has already dealt with this problem and may want to deal with it along the same lines or other lines and they should have an opportunity to do so.

DELEGATE JAMES (presiding): Does Delegate Gill wish to seek clarification on section 3?

DELEGATE GILL: Yes, please.

DELEGATE JAMES (presiding): Delegate Gill.

DELEGATE GILL: Mr. Chairman, in section 3, letter "A", on damage, I wonder if I might give an example to see if I might understand when the effective date is.

Delegate Hardwicke, if I have a home that is damaged, say, in June of 1969, could I bring suit or claim damages July 2, 1969?

DELEGATE JAMES (presiding): Delegate Hardwicke.

DELEGATE HARDWICKE: No.

DELEGATE JAMES (presiding): Delegate Gill.

DELEGATE GILL: In other words, if I have the same home which is damaged July 2, from then on I could bring damages?

DELEGATE JAMES (presiding): Delegate Hardwicke.

DELEGATE HARDWICKE: Yes.

DELEGATE JAMES (presiding): If there are no further questions on section 3, we will proceed to section 4.

Delegate Chabot.

DELEGATE CHABOT: This is still on the same section. Why is it necessary in section 3 that there be a two-year delay or one and a half year delay as to the double jeopardy provisions?

DELEGATE JAMES (presiding): Delegate Hardwicke.

DELEGATE HARDWICKE: At the present time what we are trying to hit at here is the situation where the State can take an appeal from an adverse decision in one of the magistrate's courts, and take the appeal de novo to the Circuit Court. It was our feeling that this provision ought not to come in full force and effect until we had the new district court set up functioning, and also that it should not take effect as to offenses committed prior to the effective date of the new constitution.

The reason, Delegate Chabot, that the State can take an appeal from the magistrate, is that the magistrate is not a fully qualified judge. No district court judges will be fully qualified judges. These magistrates, as you know, are persons who are part-time people. They may or may not be lawyers and so forth.

Under the present Constitution, the State can take an appeal up to the Circuit Court from these magistrates' courts in adverse decisions. It was our feeling, when we get a new district court with qualified judges, this right ought not to exist and the double jeopardy provision then ought to be applicable in the district court level, but until the new district court comes into existence, we want to continue to permit the State to take an appeal from the magistrate.

DELEGATE JAMES (presiding): Delegate Chabot.

DELEGATE CHABOT: Without agreeing or pursuing that particular point further, it would appear that you are requiring the State to prove that the offense was, in fact, committed prior to a certain date before the State can take the appeal. Was this your purpose? I would imagine in most of the cases coming before those courts the question of whether the offense was committed at all is determinative of the issue so that the State could not normally have proven that the offense was committed without normally proving that that person committed the offense.

DELEGATE HARDWICKE: Well, Delegate Chabot, I must concede that you have a point. The way this will operate, and as I understand it, is that before July 1, 1968, those cases will be tried in the magistrates' court and the State can take an appeal as it now can.

As to those cases which are tried in the magistrates' court until the new district court comes into effect, the State can still